IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2680 OF 2004

Maharashtra General Kamgar
Union,
252, Janata Colony, Ram Narayan
Narkar Marg, Ghatkopar (East),
Mumbai 400 077. ... Petitioner

Vs.

Haldyn Glass Works,
Off. Western Express Highway,
Goregaon (East),
Mumbai 400 063.

Mr. N.M. Ganguli for Petitioner.

Mr. V.P. Vaidya for Respondent.

CORAM : F.I. REBELLO,J.
DATED : DECEMBER 03, 2004

ORAL JUDGMENT

1. Rule. By consent heard forthwith.

2. Petitioner is a registered trade union and represents the workmen employed in the undertaking of the Respondent. It is the case of the Petitioners that the workman employed with Respondent No. 1 in view of the fact that General employees union of which they were members did not make efforts to improve the wages and other conditions of service of the workmen, ultimately in or about 1983 decided to leave the said General Employees union and joined the Petitioner union for more effective representation before the management of the Respondent. It is the case of the

Petitioner union that this was not liked by the Management who sponsored the Bhartiya Kamgar Sena and on account of that based on alleged ex-parte enquiries dismissed a large number of workmen. It is not necessary to dwell at length on that aspect. Suffice it to say that the Respondent Management came to dismiss 96 workmen. The appropriate Government referred the action of the Respondent in dismissing the workman to the industrial Tribunal in the year 1988. The Petitioners were shown as party who had espoused the case of said individual workmen. It may be mentioned that the Appropriate Government did not make a single reference in respect of each dismissed workman but clubbed several workmen together in one reference. On the reference being made parties filed their claim statement and written statement. The Petitioner Union raised objection that the enquiries held were not fair and proper. By Part I Award the learned Labour Court was pleased to hold that the enquiry held was not fair and proper.

. After the said order, an application came to be made by the Respondent Company dated 7.10.1996. It was contended therein that in the written statement they had taken a stand that the Petitioner Union has no locus standi to file statement of claim and represent the workmen concerned in the Reference in as much as the reference was in respect of a

dispute being an individual dispute under Section 2(k) and not an industrial dispute under Section 2(k) of the Industrial Dispute Act, 1947. The Respondent company therefore, called on the Tribunal to decide the said issue as a preliminary issue before deciding the other issues. On behalf of the Petitioner Union, a reply came to be filed dated 18.10.1996. It was their contention that the application as filed is not maintainable in law. They further set out that the dispute raised by the Union is in respect of non-employment and that it is well settled principle of law that unrecognised union has right to take up the issue of workmen regarding termination, discharge or dismissal. Reference was made to the provisions of the Industrial Dispute Act as amended in the State of Maharashtra. So also it was contended that the issue raised by the Respondent company is an attempt to delay the proceedings.

3. The application came to be heard by the learned Labour Court and by its award of 19.9.2003, it was pleased to hold that an appreciable number of workmen are not on the side of the Petitioner Union and that the Petitioner Union was an unrecognised union. The Labour Court was further pleased to observe that this is not an individual dispute supported by unrecognised union and as such the reference is not tenable. The Labour Court in the

course of discussion, adverted to the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 (thereinafter referred to as MRTU & PULP Act) as also the provision of the Industrial Dispute Act, 1947 as amended in the state of Maharashtra, more specifically to Section 20(2)(b) as also to the proviso to Section 30, the Labour Court posed itself a following question :

> "But when the dispute is regarding the retrenchment, discharge, dismissal of an employee,m there is on exception. It means that an employee can agitate his dispute through an unrecognised union but can a group of employees agitate their grievances through the unrecognised union."

. The Learned Labour Court found that the words used are in singular. Various judgements referred to by the parties were adverted and then came the award holding that the Petitioner Union had no right to espouse cause of the workmen in respect of whom reference was made. Accordingly rejected the reference. This Award is the subject matter of the present petition.

4. At the hearing of this petition, on behalf of

the Petitioner it is submitted that even though it is an unrecognised union, disputes of an individual nature like dismissal as provided under Section 2(A) of the Industrial Disputes Act, can be espoused by it, considering that such disputes are deemed industrial disputes by operation of law. Reference is made to Section 2(A) of the Industrial Disputes Act for that purpose. It is therefore, submitted that once the workmen himself could have raised an industrial dispute in respect of his dismissal, discharge, termination or otherwise, as set out under Section 2(A), merely because an unrecognised union has raised dispute on his part, cannot result to mean that it was not an individual dispute. It is further submitted that the Appropriate Government merely because it has clubbed a group of workmen dismissed from service by the same employer in one reference would not automatically exclude applicability of Section 2(A) of the Industrial Disputes Act. Reference is made to large number of authorities, which will be adverted to in the course of discussion, to the extent necessary.

. On the other hand on behalf of the Respondent employer, their learned counsel contends that even though the workman could have raised a dispute regarding their dismissal or termination, the Union in order to espouse the cause must have substantial

support amongst the workers employed in the Industry. In the instant case, there was a recognised union. The Petitioner Union was not a recognised union. No material was produced to show that it had support of substantial number of workmen in the establishment. It is therefore submitted that the Labour Court was right in rejecting the reference. The Award it is submitted does not suffer from any error apparent on the face of record and consequently this court in exercise of its extra ordinary jurisdiction ought to interfere with the same.

5. Before addressing myself to the issue, it would be gainful to refer to the passage in the judgement of Mumbai Kamgar Sabha Bombay Vs. M/s. Abdulbhai Faizullabhai and others, AIR 1996 Supreme Court, 1455. Krishna Iyer speaking for the Apex Court was pleased to observe as under :

> "But a bare reading of the petition, the description of parties, the grounds urged and grievances aired, leaves us in no doubt that the battle is between the workers and employers and the Union represents, as a collective noun, as it were, the numerous humans whose presence is indubitable in the contest, though formally invisible on the party array.

> The substance of the matter is obvious and formal defects, in such circumstances, fade away. We are not dealing with a civil litigation governed by the Civil Procedure Code but with an industrial dispute where the process of conflict resolution is informal, rough and ready and invites a liberal approach. Procedural prescriptions are handmaids, not mistresses of justice and failure of fair play is the spirit in which Courts must view processual deviances. Our adjectival branch of jurisprudence, by and large, deals not with sophisticated litigants but the rural poor, the urban lay and the weaker societal segments for whom law will be an added terror if technical mis-descriptions and deficiencies in drafting pleadings and setting out the cause-title create a secret weapon to non-suit a party. Where foul play is absent, and fairness is not faulted, latitude is a grace of processual justice. ....."

. This paragraph in my opinion ought to settle the issue in this matter. If an individual workman himself had raised a dispute, there could not have been an objection that the reference at the behest

of such individual workman is not maintainable. A helpless and financially improvised workman, if he seeks the support of his Union to help him in his attempt for justice is however being denied access to courts on procedural technicalities that the appropriate Government in its wisdom, chose to make reference clubbing together not an individual workman but a group of workmen who had been dismissed from service by the same employer, then if an union represents them, they must have support of a substantial number of workmen, in the establishment.

. It is no doubt true that the provisions of the Industrial Dispute Act, 1947 in the state of Maharashtra stands amended in view of the provisions of the M.R.T.U. & P.U.L.P. Act. By the concept of recognised union the legislature has thought it fit that the collective disputes of the nature contemplated by the Act can only be espoused by the recognised union and none other. But the legislature in its wisdom has advisedly excluded individual disputes of the nature contemplated by Section 2(A) of the Industrial Disputes Act. Section 20(2) of the M.R.T.U. & P.U.L.P. Act reads as under :

"20. Rights of recognised Union :-

(2) Where there is a recognised union for any undertaking, -

(b) no employee shall be allowed to appear or act or be allowed to be represented in any proceedings under the Central Act (not ;being a proceeding in which the legality of propriety of an order dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration), except through recognised union and the decision arrived at, or order made, in such proceeding shall be binding on all the employees in such undertaking; and accordingly, the provision of the Central Act, that is to say, the Industrial Disputes Act, 1947, XIV of 1947, shall stand amended in the manner and to the extent specified in Schedule I."

. It would be clear from the perusal of the said sub section that an employee under the Industrial Disputes Act in circumstances set out therein is not allowed to appear or act or be allowed to be represented in proceedings except through a recognised union. The sub section however, excludes orders of dismissal, discharge, removal,

retrenchment, termination of service or suspension of employee. In other words in so far as said acts on the part of the employer are concerned, there is no bar on the employee to act or to be allowed to be represented by an unrecognised union. In other words, he has right to appear or being represented other than by recognised union.

. By amendment in the State of Maharashtra, proviso has been added to Section 36(1) of the Industrial Disputes Act which proviso reads as under :

> "Provided that, where there is a recognised union for any undertaking under any law for the time being in force, no workman in such undertaking shall be entitled to be represented as aforesaid in any such proceeding (not being a proceeding in which the legality or propriety of an order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee is under consideration) except by such recognised union."

. Section 36(1) of the Industrial Disputes Act, sets out that a workman who is a party to a dispute shall be entitled to be represented in any

proceeding under this Act by any member of the executive or other office bearer of a registered trade union of which he is a member or any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated or where the worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other workman employed in the industry in which the worker is employed and authorised in such manner as may be prescribed. In other words Section 36(1) is concerned, if he was member of a registered trade union whether recognised or not, he was entitled to be represented by any member of the Executive or other office bearers of the Union. An embargo is placed in the State of Maharashtra for representation by the proviso which however, excludes disputes which fall in the category of Section 2(A) of the Industrial Disputes Act, 1947 in the nature of dismissal, discharge, removal etc. Therefore, in so far as dismissal, discharge or removal is concerned, the position remains the same as before inclusion of proviso in Section 36 of the Industrial Disputes Act. The workman who was dismissed on the reference being made was entitled to be represented by a registered trade union of which he is a member. Ordinarily therefore, the workman in the instant case was entitled to be

represented by the petitioner union.

6. Considering the above, we may now consider whether the judgments cited at the bar do create any legal bar on the right of an unrecognised union espousing the cause of individual workman in respect of an individual dispute which is a deemed industrial dispute under Section 2(A) of the Indsutrial Disputes Act, 1947 or of unrecognised union representing an individual workman or a group of workmen in proceedings arising from a reference in respect of a dispute falling under Section 2(A) of the Industrial Disputes Act.

. On behalf of the Respondent company, their learned counsel has relied on the judgement in the case of State of Punjab Vs. The Goudharn Transport Co. (P) Ltd and others, 1975 LAB I.C. 358. In that case, there were sixty workman employed in the company and only eighteen workmen sponsored the cause of the dismissed and retrenched workmen and these 18 included thirteen dismissed workers of the Company. Reference in that case was dated 5.3.1962 i.e. much before the introduction of Section 2(A) to the Industrial Dispute Act, 1947. The Apex Court therefore, was considering the definition of Industrial Dispute as it stood before introduction of Section 2(A) of the Industrial Disputes Act. The Apex Court therein noted that as only 5 workmen

out of sixty had espoused the cause of the dismissed and retrenched workers and such an espousal would not be considered to be by an appreciable or substantial body of workmen so as to constitute the dispute an industrial dispute. To my mind this judgement would be of no assistance for consideration of the issue involved here considering introduction of Section 2(A) in the Industrial Dispute Act. Next reliance was placed on the judgement of a learned Single Judge of Calcutta High Court in the case of Swapan Das Gutpa and others Vs. The First Labour Court of West Bengal and others, 1976 LAB I.C. 202. One of the issues before the learned Single Judge was in what circumstances Section 2(A) of the Industrial Disputes Act, would be attracted. The learned Judge was pleased to hold that in order to attract Section 2(A) there must be action of employer against the workman. If the dispute is whether there was any relationship of employer and workman between them, such dispute cannot be subject matter of reference under Section 2(A). It will not be possible to accept the broad proposition as laid down in the said judgement. The very object and purpose in including Section 2(A) is to enable the dispute arising from the dismissal, termination, retrenchment etc. be raised even without substantial number of workmen in the industry or recognised union representing substantial number of

workmen espousing the cause. Merely because the employer disputes relationship would not take the dispute out of section 2(A) as that would be an issue incidental to deciding the issue of dismissal, termination, retrenchment etc. by the Tribunal and in the course of answering the issue, to decide the issue whether the employee was a workman within the meaning of Section 2(s) of the Industrial Disputes Act. Next reliance was placed on the judgement in the case of Titagarh Jute Factory Co. Ltd. Vs. Sriram Tewari, 1979 LAB I.C. 513. That again was judgement of the learned Judge of Calcutta High Court. The learned Judge therein was seeking to consider the jurisdiction of Labour Court as it stood before introduction of Section 2(A) of the Industrial Disputes Act and the position after the introduction in the Industrial Disputes Act. The learned Judge was pleased to hold that whether the dispute amounts to industrial dispute has to be ascertained with reference to principle laid down in Section 2(A). The introduction of Section 2(A) in the Industrial Dispute Act has not brought about any change. There can be no dispute on the proposition that for the reference, the dispute must be an industrial dispute as set out in either under Section 2(k) or under deemed Section 2(A) of the Industrial Disputes Act. Meaning thereby the dispute must be between employer and employee arising out of terms

and conditions of service. The difference that has emerged is that on introduction of Section 2(A) in the Industrial Dispute Act it is no longer required that the dispute of the character of Section 2(A) must be supported by a substantial number of workmen. This is the essential difference that has been brought about by introduction of Section 2(A). Though therefore, the definition of industrial dispute under Section 2(k) has not undergone change, the disputes which otherwise would not fall within the definition of Industrial Dispute are deemed by virtue of operation of law to be industrial dispute.

. The concept of industrial dispute has been explained in the case of D.N. Banerji Vs. P.R.Mukherjee and others, AIR 1953 Supreme Court

58. The Apex Court observed as under :

> "But at the same time, having regard to the modern conditions of society where capital and labour have organised themselves into groups for the purpose of fighting their disputes and setting them on the basis of the theory that in union is strength and collective bargaining has come to stay, a single employee's case might develop into an industrial dispute, when as often happens, it is taken up by

the trade union of which he is a member and there is a concerted demand by the employees for redress. Such trouble may arise in a single establishment or a factory....."

. The essential test before the introduction of section 2(A) was that for a dispute to partake of an industrial dispute it had to be espoused by the Union or substantial number of workmen subsequent to amendment and introduction of Section 2(A) by operation of law certain individual disputes becomes deemed industrial dispute.

. Even under the provisions of M.R.T.U. & P.U.L.P. Act the right of the workman to be represented in certain cases of disputes has been upheld. It is only in limited kind of disputes referred to in the Act recognised union has been recognised as the sole bargaining agent. If reference is needed we may refer to the case of Ram Bala Kate Vs. Walchandnagar Industries Ltd. 1996(1) MLJ 713, Tata Hydro Electric Power Supply Co. Ltd. and others Vs. Narendra L. Mansukhani and Others, 1999 1 CLR 741 and in the judgement of Yashwant Jagannath Ingawale and Ors. Vs. Snowcem India Ltd. and Ors. 2000 1 CLR 116.

7. The only question is whether in a reference which has been espoused by the Union regarding an individual dispute which is a deemed industrial dispute, must the dispute be espoused by a recognised union or must it be supported by substantial number of workmen working in the industry. We proceed on the footing that there is no material to support the contention of the petitioner union that it represents substantial number of workmen who were employed with respondent company. In my opinion that would not make any difference. Whether the individual workman raises dispute by himself or whether the dispute on his behalf is espoused by a recognised Union or substantial number of workmen in the industry would be irrelevant. The reference would be maintainable as long as the dispute falls within section 2(A) of the Industrial Disputes Act, 1947. The amendment to the law has not been made with a view to defeat the rights of an individual workmen to raise dispute which earlier he could not have raised, but has been done in order to enable him to get his grievances redressed even if substantial number of workmen or the recognised union in the industry does not espouse his cause. The fact that the union espoused the cause would not mean that the dispute must satisfy the ingredients of industrial dispute within the meaning of section 2(K) of the Industrial Disputes Act. It would be sufficient

that it is a deemed industrial dispute within the meaning of Section 2(A) of the Industrial Disputes Act. To my mind therefore, the order of the Labour Court in holding that reference would not be maintainable as it was not espoused by substantial number of workmen or by a recognised union clearly discloses an error of law apparent on the face of record and the award is liable to be set aside.

8. Looking at the records, I find that the reference is of the year 1988. Sixteen years have passed since the reference was made. The law would be meaningless if both the employer and employee do not have speedy disposal of the matter considering the equities that would arise. In the light of that, in my opinion, this will be a fit case to issue direction that the reference be disposed of at the earliest. In the light of that petition made absolute in terms of Prayer Clause (a) of the Petition. The Labour Court is directed to dispose of the reference at any rate within one year from today.

(F.I. REBELLO,J.)